

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LESLIE PURNELL,

Plaintiff,

v.

Case No. 05-CV-73384-DT

ARROW FINANCIAL SERVICES, LLC,

Defendant.

**OPINION AND ORDER DENYING AS UNTIMELY DEFENDANT'S
"MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION"**

Pending before the court is Defendant Arrow Financial Services, LLC's "Motion to Dismiss for Lack of Subject Matter Jurisdiction," which was filed on January 19, 2007. The motion will be denied as untimely, as it was filed well after the dispositive motion cut-off date of October 2, 2006. (4/14/06 Scheduling Order at 4.) While a party may never forfeit or waive a challenge to subject matter jurisdiction, *see Along v. Ford Motor Co.*, 386 F.3d 716, 728 (6th Cir. 2004), Defendant must nonetheless assert its rights within the framework of the court's scheduling order. The court recalls the remarks made by Defendant's counsel on the record at a January 10, 2007 hearing in which the court accepted Defendant's substitution of counsel to the effect that substitute counsel was "well aware of the schedule in this case," and that he was "not in a position to ask for any kind of continuance, and [] will not."

Even absent remarks of this specificity, the court is not willing to extend the cut-off date for pretrial dispositive motions.¹ Accordingly,

¹This order is made without prejudice to Defendant's right to raise jurisdictional arguments at a later time. For example, after sufficient evidence is presented at trial,

IT IS ORDERED that Defendant's "Motion to Dismiss for Lack of Subject Matter Jurisdiction" [Dkt. # 36] is DENIED. Pretrial proceedings will continue pursuant to the court's previous scheduling orders.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: January 23, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 23, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

such an argument might take the form of a motion under Federal Rule of Civil Procedure 50.